

Exhibit B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF KATHRYN SHAW, PH.D.

JULY 3, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR

10:50:29 1 the Baron and Kreps treatise, "Strategic Human
10:50:34 2 Resources."

10:50:35 3 Do you see that?

10:50:36 4 A. Right.

10:51:07 5 THE REPORTER: Exhibit 2850.

10:51:08 6 (Exhibit 2850 was marked for identification.)

10:51:27 7 BY MS. DERMODY:

10:51:28 8 Q. Do you recognize this document marked as
10:51:29 9 Exhibit 2850?

10:51:30 10 A. Yes, I do.

10:51:31 11 Q. What is this?

10:51:32 12 A. It looks like a chapter from the Baron and
10:51:34 13 Kreps textbook.

10:51:36 14 Q. And this is a chapter that you cited in
10:51:39 15 footnote 16?

10:51:43 16 A. I'd have to match the pages as -- I -- I don't
10:51:51 17 know if it's the chapter. I'd have to look for the part
10:51:53 18 on -- on different measures of justice. I assume that
10:51:56 19 that's what you found.

10:51:57 20 Q. Yes.

10:51:58 21 A. Oh, here it is.

10:51:58 22 Q. You cite 107.

10:52:00 23 A. Yeah, here it is. 107. Here it is. Yeah.

10:52:04 24 Q. Now, in paragraph 43, you state there are two
10:52:07 25 types of internal equity, distributed justice, where you

10:52:11 1 claim is when all employees are paid the same wage; and
10:52:15 2 procedural justice, when pay is perceived to be fair
10:52:18 3 because the procedures for setting pay are fair.

10:52:21 4 Do you see that --

10:52:22 5 A. Yes.

10:52:22 6 Q. -- in your report?

10:52:23 7 A. That's right.

10:52:24 8 Q. All right. And you cite Baron and Kreps for
10:52:26 9 that proposition; is that correct?

10:52:28 10 A. Yes.

10:52:32 11 Q. And then you quote them on page 16 -- I'm
10:52:37 12 sorry. And then you in this -- sorry. In paragraph
10:52:40 13 43 -- strike that.

10:52:42 14 In paragraph 43, your sentence starting in the
10:52:46 15 second definition labeled "Procedural Justice: Pay is
10:52:49 16 perceived to be fair when the procedures for setting pay
10:52:51 17 are fair."

10:52:52 18 Do you see that?

10:52:53 19 A. Yes.

10:52:53 20 Q. And you cite Baron and Kreps, and you have a
10:52:55 21 quote there for that sentence.

10:52:57 22 Do you see that?

10:52:58 23 A. Okay.

10:52:58 24 Q. And that's page 107.

10:53:00 25 A. Right.

10:53:01 1 Q. If you turn to 107, you'll note that what
10:53:07 2 you've quoted is actually not from "Procedural Justice,"
10:53:10 3 but from "Distributive Justice."
10:53:12 4 Do you see that?
10:53:38 5 A. Well, it's referring to this -- a third justice
10:53:41 6 principle, according to the equity principle.
10:53:52 7 Okay. No, I -- I don't see that it refers to
10:53:53 8 distributive justice.
10:53:55 9 Q. Right, even though it's -- I'm sorry. It's
10:53:57 10 under --
10:53:58 11 A. It's under "Distributive Justice."
10:53:59 12 Q. So there is a heading on 107, "Distributive
10:54:02 13 Justice."
10:54:03 14 Do you see that?
10:54:03 15 A. Uh-huh. I see that, yes.
10:54:04 16 Q. If you turn to 108, do you see there is a
10:54:07 17 heading for "Procedural Justice"?
10:54:09 18 A. Yes.
10:54:09 19 Q. So would you agree that the quote you have put
10:54:12 20 in footnote 16 comes from "Distributive Justice," not
10:54:15 21 "Procedural Justice" from Baron/Kreps; is that correct?
10:54:22 22 MR. KIERNAN: Object to form.
10:54:24 23 THE WITNESS: Yes. It looks like it's from the
10:54:27 24 section "Distributive Justice."
25 //

10:54:29 1 BY MS. DERMODY:

10:54:29 2 Q. Okay. So the cite in paragraph 43 to this
10:54:35 3 text, which is a cite about procedural justice, is
10:54:40 4 inaccurate; is that correct?

10:54:43 5 MR. KIERNAN: Object to form.

10:54:49 6 THE WITNESS: Well, it's under the setting of
10:54:51 7 distributive justice. So is it inaccurate? It looks
10:55:05 8 like it should be referring to distributive justice, but
10:55:08 9 I'd have to read the whole thing.

10:55:40 10 So what's the question?

10:55:40 11 BY MS. DERMODY:

10:55:41 12 Q. So the question was, this citation at footnote
10:55:43 13 16 to the sentence about procedural justice is
10:55:45 14 inaccurate; isn't that correct?

10:55:47 15 MR. KIERNAN: Object to form.

10:55:52 16 THE WITNESS: It looks like it should be
10:55:53 17 referring to distributive justice.

10:55:55 18 BY MS. DERMODY:

10:55:55 19 Q. Okay. And let's go back to paragraph 43.

10:56:02 20 So you relied on Baron and Kreps for this
10:56:04 21 analysis of the difference between distributive justice
10:56:07 22 and procedural justice; is that correct?

10:56:10 23 A. And my own knowledge of the area.

10:56:12 24 Q. Okay. And you say in paragraph 43, "The
10:56:17 25 distributive justice is where pay is perceived fair

10:56:21 1 because everyone is paid the same, like in a unionized
10:56:24 2 setting"; is that correct?

10:56:29 3 A. That's correct. Yes.

10:56:39 4 Q. And if you go to page 106 of Baron and Kreps,
10:56:49 5 under "Distributive and Procedural Justice," do you see
10:56:52 6 that heading?

10:56:53 7 A. Uh-huh.

10:56:53 8 Q. And you'll see at the very end there is a
10:56:58 9 definition that Baron and Kreps gives to distributive
10:57:01 10 versus procedural justice.

10:57:03 11 Do you see that?

10:57:04 12 A. You mean the -- what's in italics?

10:57:07 13 Q. Yes.

10:57:07 14 A. Yes.

10:57:08 15 Q. And under the Baron and Kreps definition there,
10:57:11 16 where it says, "Distributive justice is how people did
10:57:14 17 relative to others, and procedural is the process by
10:57:17 18 which the outcome was achieved," do you see that?

10:57:20 19 A. Yes, I do.

10:57:21 20 Q. And that's inconsistent with the idea that
10:57:24 21 distributive justice only means pay is the same for
10:57:27 22 everyone; is that correct?

10:57:29 23 MR. KIERNAN: Object to form.

10:57:30 24 THE WITNESS: Distributive justice means pay is
10:57:31 25 the same for everybody looking at people, comparing

10:57:38 1 people perhaps of -- yeah -- no. That -- no, that's
10:57:49 2 right. Distributive justice is whether the outcomes are
10:57:54 3 perceived to be fair by individuals, the outcome -- the
10:57:57 4 pay outcomes instead of the pay procedures.

10:58:01 5 BY MS. DERMODY:

10:58:01 6 Q. Right. And it's not solely about being paid
10:58:04 7 the same, correct?

10:58:07 8 MR. KIERNAN: Object to form.

10:58:09 9 THE WITNESS: Well, when I say "when all are
10:58:11 10 paid the same wage," what I mean is that all are paid the
10:58:16 11 same wage in a setting like a unionized setting. So in a
10:58:22 12 unionized setting what you can imagine is when you look
10:58:27 13 at a worker who is of a certain tenure class that another
10:58:30 14 worker would earn the exact same amount in that same
10:58:34 15 tenure class.

10:58:35 16 BY MS. DERMODY:

10:58:35 17 Q. Dr. Shaw, in footnote 16 you characterize Baron
10:58:38 18 and Kreps as a leading textbook; isn't that correct? The
10:58:45 19 first words of your footnote, do you see that?

10:58:48 20 A. Yes, that's right.

10:58:49 21 Q. And you wrote those words, right?

10:58:51 22 A. Uh-huh. That's right.

10:58:52 23 Q. Okay. And in relying on Baron and Kreps for
10:58:55 24 this notion that distributive justice means only that pay
10:59:00 25 is perceived to be fair when people are paid the same,

10:59:04 1 you're actually misrepresenting what Baron and Kreps say
10:59:07 2 here, aren't -- don't you?
10:59:09 3 A. No.
10:59:09 4 MR. KIERNAN: Object to form. Object to form.
10:59:15 5 BY MS. DERMODY:
10:59:15 6 Q. In what way are you not misrepresenting it?
10:59:18 7 MR. KIERNAN: Object to form.
10:59:19 8 THE WITNESS: I'm forming -- you know, this is
10:59:21 9 my version of distributive justice. I'm referring to a
10:59:25 10 leading textbook, and the leading textbook would agree
10:59:29 11 that distributive justice is when pay outcomes are --
10:59:34 12 are -- when outcomes are -- for people are paid the same.
10:59:40 13 BY MS. DERMODY:
10:59:41 14 Q. Let's go to what you quoted -- or misquoted as
10:59:46 15 being procedural justice, but really comes from
10:59:49 16 distributive justice on 107.
10:59:52 17 MR. KIERNAN: Object to form.
10:59:53 18 BY MS. DERMODY:
10:59:53 19 Q. Do you see under "Distributive Justice" on 107
10:59:56 20 where it says, "A third justice principle"?
10:59:58 21 Do you see that?
10:59:59 22 A. Yes, I do.
11:00:00 23 Q. And can you read that out loud for me?
11:00:02 24 A. It says, "A third justice principle that has
11:00:05 25 been shown to prevail in many settings, especially where

11:00:08 1 performance varies significantly across individuals, is
11:00:10 2 simple equity."

11:00:11 3 Q. And as Baron/Kreps described on the page
11:00:14 4 before, and identifying what distributive justice means,
11:00:18 5 it's how they did relative to others; isn't that correct,
11:00:22 6 Dr. Shaw?

11:00:23 7 A. But it's how people did relative to others in
11:00:26 8 their outcomes, not in their procedures.

11:00:29 9 Q. That's fine. But it's not about being the
11:00:32 10 same; isn't that correct, Dr. Shaw?

11:00:34 11 MR. KIERNAN: Object to form.

11:00:35 12 THE WITNESS: No. It -- it is that people are
11:00:37 13 paid the same wage for when -- when people are in
11:00:42 14 comparison groups. So, as I said a moment ago, if you
11:00:46 15 look at a unionized setting where somebody is being -- is
11:00:51 16 in a tenure group, certain tenure class, they are going
11:00:55 17 to be paid the same as everybody else in that tenured
11:00:58 18 class. And the whole point of distributive justice is
11:01:01 19 when you look at a unionized setting, people want pay to
11:01:05 20 be compressed across tenure groups.

11:01:07 21 BY MS. DERMODY:

11:01:08 22 Q. And it's not just unionized settings, is it,
11:01:11 23 Dr. Shaw. It's also other settings as indicated by Baron
11:01:15 24 and Kreps right here.

11:01:17 25 A. Which -- what are you referring to?

11:01:19 1 Q. Page 107.

11:01:20 2 A. I know. Which paragraph?

11:01:21 3 Q. Where it says, "A third justice principle has
11:01:23 4 been shown to prevail in many settings, especially where
11:01:27 5 performance varies significantly, is simple equity."
11:01:31 6 That's about relative fairness; isn't that right,
11:01:34 7 Dr. Shaw?

11:01:35 8 MR. KIERNAN: Object to form.

11:01:38 9 THE WITNESS: It's about using comparisons
11:01:44 10 across people in more traditional environments.

11:01:50 11 BY MS. DERMODY:

11:01:50 12 Q. Where does it say that, Dr. Shaw, that that's
11:01:54 13 what we're talking about here?

11:01:56 14 A. Well, it doesn't say "traditional environment,"
11:01:58 15 but my knowledge of different notions of justice and
11:02:00 16 fairness is that distributive justice is more likely to
11:02:03 17 prevail in a more traditional environment.

11:02:06 18 Q. But not exclusively; isn't that correct,
11:02:07 19 Dr. Shaw?

11:02:08 20 A. It can really prevail primarily in a
11:02:12 21 traditional environment. It does not apply to the
11:02:15 22 environments of the Defendant firms.

11:02:16 23 Q. And would you characterize the academic
11:02:18 24 environment as a unionized traditional environment?

11:02:23 25 MR. KIERNAN: Object to form.

11:02:25 1 THE WITNESS: I would not characterize it.

11:02:28 2 BY MS. DERMODY:

11:02:29 3 Q. Okay. If you look under "Distributive
11:02:31 4 Justice," Dr. Shaw, going on to page 107, from 107 bottom
11:02:37 5 to 108, the example being used is the rank and pay of
11:02:42 6 Stanford faculty; isn't that correct?

11:02:44 7 A. No. Well, it says, "Each year the Stanford
11:02:46 8 University faculty-staff newspaper publishes charts
11:02:49 9 showing salary distributions by rank and department."

11:02:54 10 What's your question about that?

11:02:55 11 Q. That you are drawing the conclusion that
11:03:00 12 distributive justice is solely about unionized workplaces
11:03:04 13 when the treatise you are relying upon is talking about
11:03:07 14 people in academia; isn't that correct?

11:03:10 15 MR. KIERNAN: Object to form.

11:03:13 16 THE WITNESS: Well, you know, as they're saying
11:03:16 17 here, this is talking about people in academia, but
11:03:23 18 they're not -- they're not talking about the way in which
11:03:26 19 justice is applied to this. It doesn't really extend a
11:03:29 20 discussion of how distributive justice is applying to
11:03:32 21 Stanford faculty.

11:03:34 22 BY MS. DERMODY:

11:03:34 23 Q. I'd like you to read on page 107 the last
11:03:37 24 paragraph that starts, "What matters, of course," all the
11:03:39 25 way over until the sentence finishes on the top of 108.

11:03:43 1 Could you do that for me?

11:03:44 2 A. Okay. "What matters, of course, is not whether
11:03:47 3 a reward system or other employment practice is just in
11:03:51 4 some absolute sense, but rather what employees perceive.
11:03:57 5 Consequently, efforts to demonstrate internal and
11:04:01 6 external equity are crucial in establishing perceptions
11:04:02 7 of distributive justice. Seemingly, objective data can
11:04:06 8 be remarkably persuasive in creating such perceptions,
11:04:11 9 even when the consumers of such data recognize the
11:04:14 10 subjectivity involved. For instance, each year the
11:04:18 11 Stanford University faculty-staff newspaper publishes
11:04:19 12 charts showing salary distributions by rank and
11:04:23 13 department for Stanford faculty."

11:04:26 14 Q. Thank you, Dr. Shaw. Now, what you just read,
11:04:29 15 wasn't that giving an example of distributive justice
11:04:32 16 from the Stanford faculty?

11:04:34 17 A. Well, he doesn't make clear how this is an
11:04:35 18 example. It is under "Distributive Justice."

11:04:39 19 But he goes on to say that everyone seems to
11:04:42 20 know that these data are cooked in a variety of
11:04:45 21 conspicuous -- you know, conspicuous ways, and so he goes
11:04:51 22 on to say, "economics professors, who make more than
11:04:54 23 other social science professors, are grouped with natural
11:04:58 24 science professors who do not make as much."

11:05:01 25 So he's discussing -- he's discussing really

11:05:07 1 comparisons across different groups within the Stanford
11:05:12 2 faculty.

11:05:13 3 Q. The relative comparisons, correct?

11:05:16 4 MR. KIERNAN: Object to form.

11:05:18 5 THE WITNESS: That's not clear.

11:05:19 6 BY MS. DERMODY:

11:05:19 7 Q. Okay. And if you go on, continuing on from
11:05:21 8 what you were looking at, there is a sentence that says,
11:05:23 9 "and yet our faculty colleagues nonetheless seem to focus
11:05:28 10 quite a bit of attention on gauging where they show up in
11:05:31 11 such plots relative to others."

11:05:33 12 Do you see that?

11:05:34 13 A. Again, he's looking at outcomes. He's looking
11:05:37 14 at pay outcomes. Now, where do you have that?

11:05:40 15 Q. It's in the middle of that paragraph.

11:05:42 16 A. In the middle of that paragraph?

11:05:44 17 Q. If you keep on going past the footnote --

11:05:46 18 A. Oh, yes, I see it.

11:05:51 19 Yes. But, you know, this is an example that is
11:05:54 20 really not an example of distributive justice, because,
11:05:58 21 to be honest, the Stanford environment is one which is
11:06:03 22 very much a pay-for-performance environment. And it's
11:06:06 23 very much one in which procedural justice is done.

11:06:12 24 Q. Well, Dr. Shaw, is it fair to say you disagree,
11:06:15 25 then, with the treatise you cited as to what they think

11:06:18 1 is distributive justice?

11:06:20 2 MR. KIERNAN: Object to form.

11:06:21 3 THE WITNESS: I'm not sure how he's using the
11:06:23 4 example here, but I do know for a fact that Stanford
11:06:27 5 faculty believe that the procedures for setting pay are
11:06:30 6 fair, and as a result that's what makes the system fair.

11:06:32 7 BY MS. DERMODY:

11:06:33 8 Q. I'm not talking about what the faculty believe,
11:06:35 9 Dr. Shaw. I'm talking about what Baron and Kreps wrote
11:06:38 10 about. Do you understand?

11:06:39 11 MR. KIERNAN: Object to form.

11:06:40 12 THE WITNESS: I'm not that familiar with what
11:06:41 13 they had in mind here. I'm just now reading it. And I
11:06:44 14 haven't had time to think it through.

11:06:46 15 BY MS. DERMODY:

11:06:46 16 Q. Dr. Shaw, in your report you cite Baron and
11:06:49 17 Kreps as the leading textbook and assert that
11:06:52 18 distributive justice is about unionized pay settings, and
11:06:57 19 do you not agree that Baron and Kreps actually talk about
11:07:00 20 Stanford University as an example of distributive
11:07:02 21 justice?

11:07:03 22 MR. KIERNAN: Object to form.

11:07:07 23 THE WITNESS: I would have to look at this
11:07:10 24 paragraph much more carefully to find out why it is
11:07:13 25 they're -- they thought through this was an example of --

11:07:16 1 one of distributive justice. Because I'm quite certain
11:07:19 2 that Stanford faculty would believe that procedures for
11:07:23 3 setting pay are fair, because -- and that it -- that
11:07:27 4 procedural justice applies.

11:07:28 5 BY MS. DERMODY:

11:07:30 6 Q. Dr. Shaw, why don't you take a minute and read
11:07:32 7 that paragraph again, and then tell me what it is about
11:07:35 8 the Stanford faculty that is identified, not by your
11:07:39 9 personal information outside of this article you cited,
11:07:42 10 but by Baron and Kreps, that isn't about distributive
11:07:45 11 justice.

11:07:46 12 A. My -- you know, it would be difficult for me to
11:07:49 13 not cite personal information as well, because I know for
11:07:52 14 a fact that Stanford faculty are paid for their
11:07:56 15 performance and that the procedures in place are
11:08:00 16 pay-for-performance environment.

11:08:02 17 Q. Well, it sounds like Baron and Kreps would
11:08:04 18 agree that Stanford University's pay-for-performance
11:08:10 19 system is also about distributive justice.

11:08:13 20 A. That's not clear how they're using it.

11:08:18 21 Q. Do you concede at least that Baron and Kreps
11:08:20 22 are citing an example about the Stanford faculty under a
11:08:24 23 header, "Distributive Justice"?

11:08:28 24 A. They are doing that.

11:08:48 25 Q. Dr. Shaw, pardon me in asking, but have you

11:08:51 1 ever gotten in trouble because you have misstated your
11:08:54 2 research?

11:08:55 3 A. No, I haven't.

11:08:57 4 Q. Okay. Have you ever been in trouble for
11:08:58 5 exaggerating credentials?

11:09:01 6 MR. KIERNAN: Object to form.

11:09:02 7 THE WITNESS: No, I haven't.

11:09:04 8 MS. DERMODY: Okay. Let's take a quick break.

11:09:06 9 THE VIDEOGRAPHER: Okay. This is the end of
11:09:07 10 Video No. 1. We're off the record at 11:09.

11:09:09 11 (Recess was taken.)

11:28:20 12 THE VIDEOGRAPHER: We are now on the record at
11:28:21 13 11:28. This is the beginning of Video No. 2.

11:28:27 14 BY MS. DERMODY:

11:28:28 15 Q. So, Dr. Shaw, what did you do to investigate
11:28:30 16 the amount of discretions -- discretion that managers had
11:28:34 17 at Defendant firms here?

11:28:37 18 A. I read an extensive number of depositions that
11:28:40 19 discussed managerial discretion in setting pay.

11:28:44 20 Q. Did you review any of the guidelines for
11:28:47 21 discretion?

11:28:48 22 A. What do you refer to with "guidelines"?

11:28:51 23 Q. Did you do a systematic study to see if there
11:28:54 24 were guidelines of managerial discretion?

11:28:57 25 MR. KIERNAN: Object to form.

13:03:45 1 BY MS. DERMODY:

13:03:46 2 Q. Over time rather than instantaneously.

13:03:49 3 MR. KIERNAN: Object to form.

13:03:51 4 THE WITNESS: Over adjustments in response
13:03:53 5 to -- can you clarify?

13:03:54 6 BY MS. DERMODY:

13:03:55 7 Q. Sure. Did you do anything to study whether
13:03:57 8 groups of people were adjusted upward gradually over time
13:04:03 9 as a concept of internal equity?

13:04:08 10 A. I looked at all the evidence that I requested,
13:04:12 11 and in that evidence what I found was that people were
13:04:15 12 not adjusted and that the standard pay practices of these
13:04:19 13 Defendant firms is that there would not be adjustment
13:04:22 14 across job titles in response to internal equity.

13:04:26 15 THE REPORTER: Exhibit 2855.

13:04:54 16 (Exhibit 2855 was marked for identification.)

13:04:54 17 BY MS. DERMODY:

13:04:57 18 Q. Dr. Shaw, the document that has been marked as
13:04:59 19 Exhibit 2855 appears to be an email from Laszlo Bock to
13:05:04 20 Arnoldo Avalos at Google.com.

13:05:08 21 Do you see that?

13:05:16 22 A. To Laszlo Bock, yes, I see that.

13:05:18 23 Q. And have you seen this document before?

13:05:21 24 A. Not to my recollection, though I may have seen
13:05:25 25 it as -- if it was cited in some of the documents I

14:36:15 1 Q. So the answer is no?

14:36:17 2 A. So I haven't studied the quantitative impact.

14:36:39 3 Q. Paragraph 25, you indicate in this paragraph
14:36:43 4 that, one should examine the data to determine whether
14:36:46 5 there was impact to all or nearly all class members. Do
14:36:50 6 you see that? I'm not quoting, I'm paraphrasing.

14:36:58 7 A. Right.

14:37:00 8 Q. And it's fair to say that you didn't do that
14:37:03 9 study here; is that correct?

14:37:04 10 A. Well, when you paraphrase, you say, one should
14:37:07 11 examine the evidence regarding how actual pay decisions
14:37:09 12 were made and the compensation data. I have examined the
14:37:13 13 evidence on how actual pay decisions were made.

14:37:16 14 Q. But you didn't study the data; is that correct?

14:37:18 15 A. The data is -- I didn't study the data.

14:37:21 16 Q. Okay.

14:37:22 17 A. But I did study the evidence on how they were
14:37:24 18 made.

14:37:24 19 Q. But you didn't study the limitations on
14:37:27 20 discretion or anything else like that as we talked about
14:37:29 21 earlier; is that correct?

14:37:31 22 MR. KIERNAN: Object to form.

14:37:33 23 THE WITNESS: There is no data on -- there is
14:37:38 24 no dataset provided that would show limitations on
14:37:40 25 discretion.

14:37:41 1 BY MS. DERMODY:

14:37:41 2 Q. In terms of the evidence regarding how actual
14:37:44 3 pay decisions were made, isn't it your testimony earlier
14:37:48 4 that you didn't as part of that undertake to review all
14:37:51 5 of the limitations on discretion that managers might have
14:37:54 6 in making pay decisions; isn't that correct?

14:37:57 7 MR. KIERNAN: Object to form.

14:37:59 8 THE WITNESS: We discussed this earlier, and as
14:38:01 9 I said, some -- there is some managerial oversight, but I
14:38:04 10 don't know it Defendant by Defendant, and it appears as
14:38:09 11 though many Defendants empowered their managers to make
14:38:12 12 decisions that had to conform only to budget, but not to
14:38:15 13 any other guidelines or not to any other oversight.

14:38:19 14 BY MS. DERMODY:

14:38:19 15 Q. But, as we sit here today, you can't remember
14:38:23 16 which of the Defendants would fall in that category,
14:38:25 17 correct?

14:38:25 18 A. Well, there are seven Defendants, so it would
14:38:27 19 be hard for me to identify which ones.

14:38:29 20 Q. You can't remember anyone; is that correct?

14:38:32 21 A. Fall into what category?

14:38:36 22 Q. In the category that managers had only to
14:38:38 23 conform to budget, but not to any other guidelines or any
14:38:42 24 other oversight.

14:38:43 25 A. There were frequent messages in deposition

14:38:45 1 testimony suggesting that managers had ultimate
14:38:48 2 discretion in how they allocate their budget, and could
14:38:48 3 do so to pay some workers very little and some workers a
14:38:54 4 great deal.

14:38:55 5 Q. And as you described earlier, you never
14:38:57 6 undertook to determine whether there was any oversight of
14:39:00 7 those managers of that discretion; isn't that correct?

14:39:03 8 MR. KIERNAN: Object to form.

14:39:20 9 THE WITNESS: Certainly some firms would have
14:39:22 10 oversight and some wouldn't, and I don't know which is
14:39:26 11 which, as I stated a few minutes ago.

14:39:30 12 BY MS. DERMODY:

14:40:02 13 Q. In paragraph 30, if you could go to that,
14:40:04 14 please, you state that pay ranges merely serve as
14:40:12 15 guidelines for managers.

14:40:14 16 Do you see that?

14:40:16 17 A. Yes, I do.

14:40:17 18 Q. Is it your understanding there was significant
14:40:19 19 deviation for salary ranges across the Defendants?

14:40:23 20 MR. KIERNAN: Object to form.

14:40:25 21 THE WITNESS: In many depositions the HR
14:40:28 22 professionals refer to instances in which managers paid
14:40:32 23 above or below salary ranges.

14:40:34 24 BY MS. DERMODY:

14:40:34 25 Q. How widespread do you think that deviation was,

14:40:37 1 Dr. Shaw?

14:40:39 2 MR. KIERNAN: Object to form.

14:40:39 3 THE WITNESS: There is no way of knowing how
14:40:41 4 widespread it is, but they referred very often to
14:40:44 5 instances in which there was salary paid below and above
14:40:49 6 the ranges, and the ranges were mere guidelines.

14:40:52 7 BY MS. DERMODY:

14:40:52 8 Q. Well, in order for you to have your opinion
14:40:54 9 that salary ranges were mere guidelines, wouldn't it be
14:40:57 10 necessary for you to actually know whether or not the
14:41:01 11 salaries were paid in guidelines most of the time?

14:41:04 12 MR. KIERNAN: Object to form.

14:41:05 13 THE WITNESS: No, because often the depositions
14:41:07 14 state that they were not conforming to salary ranges, and
14:41:11 15 they were -- that salary ranges were mere guidelines.
14:41:14 16 That's how I formed my opinion.

14:41:15 17 BY MS. DERMODY:

14:41:16 18 Q. Would it change your opinion if you were to
14:41:17 19 find out that across these companies people were paid
14:41:21 20 within the salary guidelines 90 percent of the time?

14:41:26 21 A. Change my opinion of what?

14:41:28 22 Q. That they were mere guidelines.

14:41:32 23 MR. KIERNAN: Object to form.

14:41:38 24 THE WITNESS: They would still be guidelines,
14:41:40 25 and, you know, and that's how they were stated. Managers

14:41:43 1 had ultimate discretion in conforming to their budget and
14:41:47 2 paying within salary range only as guidelines.

14:41:50 3 BY MS. DERMODY:

14:41:50 4 Q. So is it your opinion that a salary range is
14:41:54 5 not something that is required to be followed unless it's
14:41:57 6 actually followed 100 percent of the time?

14:41:59 7 MR. KIERNAN: Object to form.

14:42:02 8 THE WITNESS: A salary range is a guideline.
14:42:03 9 I'm not sure what your question is.

14:42:04 10 BY MS. DERMODY:

14:42:05 11 Q. Well, you seem to place a lot of emphasis on
14:42:08 12 discretion in this case, and I want to figure out at what
14:42:13 13 point do you think discretion is no longer unlimited, so
14:42:17 14 would evidence that people paid in salary range almost
14:42:21 15 all the time be an indication that there was not a whole
14:42:24 16 lot of discretion?

14:42:26 17 MR. KIERNAN: Object to form.

14:42:26 18 THE WITNESS: No, it would not, because what --
14:42:29 19 where I see discretion is in annual pay increases, and in
14:42:33 20 annual pay increases it is a function of performance
14:42:36 21 evaluation. Stars may get 10 or 20 percent increase.
14:42:39 22 Medium workers may get 3 to 5 percent, and low workers
14:42:44 23 may get zero. That's a manager's discretion as a
14:42:48 24 function of many different traits of the individual, as a
14:42:51 25 function of their skills, their talent, their expected

14:42:53 1 contribution, how their project is doing, how their
14:42:56 2 project is going to be in the future.

14:42:58 3 All these things could be reflected in the pay
14:43:00 4 of individuals, and it's up to managers to decide where
14:43:04 5 they lie. Even if they do lie within the guide -- the
14:43:06 6 range, they're still using their own discretion in
14:43:09 7 deciding where the manager -- where the pay should be.

14:43:13 8 BY MS. DERMODY:

14:43:14 9 Q. Well, if salary is being paid almost all the
14:43:16 10 time within the guideline, isn't it more of a rule than a
14:43:19 11 guideline?

14:43:19 12 A. No.

14:43:20 13 MR. KIERNAN: Object to form.

14:43:23 14 THE WITNESS: No. It's still not a rule. It's
14:43:25 15 merely a guideline, because the managers have discretion
14:43:29 16 in allocating their annual budgets to -- and -- to a wide
14:43:34 17 range of different pay, and salary ranges can be very,
14:43:38 18 very broad, and it's often stated in these depositions,
14:43:42 19 salary ranges are very broad. And managers can choose
14:43:45 20 where to put their direct reports into those salary
14:43:48 21 ranges or above or below those salary ranges.

14:43:51 22 BY MS. DERMODY:

14:43:52 23 Q. Well, we're not talking about pay increases
14:43:54 24 within ranges. We are talking about the ranges
14:43:56 25 themselves in paragraph 30, and you say the ranges are

14:43:58 1 guidelines. Do you see that?

14:43:59 2 A. That's right.

14:44:01 3 Q. And I want to understand what you mean by that.
14:44:03 4 I mean, is it a rule or is it a guideline if every single
14:44:07 5 person is paid within that range?

14:44:09 6 MR. KIERNAN: You must have asked this question
14:44:11 7 six times.

14:44:12 8 MS. DERMODY: It hasn't been answered.

14:44:13 9 MR. KIERNAN: No, it has been answered. You
14:44:15 10 asked it this morning. At Hallock you told me to move on
14:44:18 11 after four times, and you're at six.

14:44:19 12 MS. DERMODY: It was the exact same question
14:44:21 13 every single time.

14:44:23 14 MR. KIERNAN: You are asking the same question.
14:44:24 15 You asked it this morning. Object to form.

14:44:33 16 THE WITNESS: There is no evidence on how much
14:44:34 17 they conform to these guidelines, but they are just
14:44:38 18 guidelines, and that's stated over and over in the
14:44:41 19 depositions, that these are guidelines. The salary
14:44:44 20 ranges are guidelines to be given to managers in making
14:44:47 21 pay decisions.

14:44:50 22 BY MS. DERMODY:

14:44:50 23 Q. And my question was different. My question
14:44:52 24 was, if you assume that a hundred percent of the people
14:44:57 25 were paid within guidelines, isn't that more of a rule,

14:45:01 1 wouldn't that be your conclusion, it was a rule, not a
14:45:05 2 guideline?

14:45:06 3 MR. KIERNAN: Object to form.

14:45:10 4 THE WITNESS: No. It could well be that annual
14:45:13 5 pay increases still kept people within the salary range
14:45:17 6 even though they were targeting pay for performance as a
14:45:20 7 function so that the annual increase was a function of
14:45:23 8 performance.

14:45:25 9 BY MS. DERMODY:

14:45:59 10 Q. Okay. Going to paragraph 38, as indicated in
14:46:16 11 38, you would agree, wouldn't you, that there are
14:46:18 12 occasions when pay is adjusted for employees who get
14:46:23 13 outside offers; is that right?

14:46:26 14 A. As I say here, in relative rare instances, pay
14:46:30 15 may be adjusted to retain an employee when he or she
14:46:34 16 receives an outside offer.

14:46:39 17 Q. And on what evidence do you say that this is a
14:46:41 18 rare occasion?

14:46:44 19 A. I say it based on the evidence from the
14:46:46 20 depositions where people are often asked how often they
14:46:50 21 counteroffer, and they say it's very rare, and it's
14:46:54 22 only -- counteroffers are only made to those individuals
14:46:57 23 who are star performers.

14:46:58 24 Q. Did you also see deposition evidence that
14:47:01 25 showed companies acting proactively preemptively to

16:41:16 1 I, Rosalie A. Kramm, Certified Shorthand
 16:41:16 2 Reporter licensed in the State of California, License No.
 16:41:16 3 5469, hereby certify that the deponent was by me first
 16:41:16 4 duly sworn and the foregoing testimony was reported by me
 16:41:16 5 and was thereafter transcribed with computer-aided
 16:41:16 6 transcription; that the foregoing is a full, complete,
 16:41:16 7 and true record of said proceedings.

16:41:16 8 I further certify that I am not of counsel or
 16:41:16 9 attorney for either of any of the parties in the
 16:41:16 10 foregoing proceeding and caption named or in any way
 16:41:16 11 interested in the outcome of the cause in said caption.

16:41:16 12 The dismantling, unsealing, or unbinding of the
 16:41:16 13 original transcript will render the reporter's
 16:41:16 14 certificates null and void.

16:41:16 15 In witness whereof, I have hereunto set my hand
 16:41:16 16 this day: July 6, 2013.

16:41:16 17 X Reading and Signing was requested.

16:41:16 18 Reading and Signing was waived.

16:41:16 19 Reading and signing was not requested.

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 ROSALIE A. KRAMM

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CSR 5469, RPR, CRR

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